

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 * * *

10 JESUS PALAFOX-LUGO,

Case No. 2:18-cv-01294-GMN-VCF

11 Petitioner,

12 v.

ORDER

13 JOSEPH LOMBARDO,

14 Respondent.
15

16 This habeas matter under 28 U.S.C. § 2241 comes before the court for initial
17 review under Rule 4 of the Rules Governing Section 2254 Cases.¹ Petitioner, Jesus
18 Palafox-Lugo, seeks relief from this court with respect to a criminal proceeding in the
19 Las Vegas Justice Court for Nevada. According to his allegations, the Clark County
20 Detention Center has refused to comply with an order of the justice court directing the
21 detention center to accept the bail of \$25,000.

22 On initial review, it appears that Palafox-Lugo's petition is barred under the
23 abstention doctrine in *Younger v. Harris*, 401 U.S. 37 (1971). He therefore must show
24 cause in writing why the petition should not be dismissed without prejudice.
25

26
27 ¹ Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (Habeas Rules) is applicable
28 to proceedings brought pursuant to § 2241. Habeas Rule 1(b).

1 **Background**

2 The petition before the court contains the following allegations. Palafox-Lugo is a
3 native and citizen of Mexico. He was arrested by the Las Vegas police on June 27,
4 2018, and subsequently charged by the Clark County District Attorney with violations of
5 Nevada Revised Statutes §§ 453.401 and 453.3385.3 (sections of the Uniform
6 Controlled Substances Act). On June 28, 2018, the state justice court set his bail at
7 \$25,000, allowing him to post this bail by way of cash or surety.

8 After a source hearing on July 13, 2018, the justice court ordered that the Clark
9 County Detention Center accept the bail of \$25,000 and imposed an additional condition
10 of low-level electronic monitoring. The court also set the matter for a preliminary hearing
11 to take place on July 26, 2018, at 9:00 A.M. In the days that followed, attempts to post
12 bail were rejected by the detention center, apparently because Palafox-Lugo is subject
13 to a “hold” imposed by U.S. Immigration and Customs Enforcement (ICE).²

14 Alleging the Eighth Amendment and the Due Process Clauses of the Fifth and
15 Fourteenth Amendments as grounds for relief, Palafox asks this court to grant him a writ
16 of habeas corpus that directs respondent, Joseph Lombardo, Sheriff of Clark County, to
17 either show cause why he has failed to comply with the justice court's bail order or
18 release Palafox-Lugo under the terms set forth in the order.

19 **Abstention Doctrine**

20 As a general rule, a federal court will not entertain a habeas petition seeking
21 intervention in a pending state criminal proceeding, absent special circumstances. *See,*
22 *e.g., Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983); *Carden v. Montana*, 626
23 F.2d 82, 83-85 (9th Cir. 1980); *Davidson v. Klinger*, 411 F.2d 746 (9th Cir. 1969). This
24 rule of restraint is separate from the exhaustion doctrine and is ultimately grounded in
25
26

27 ² Palafox-Lugo does not name ICE or any representative of the federal government as a respondent herein.
28

1 principles of comity that flow from the abstention doctrine of *Younger v. Harris*, 401 U.S.
2 37 (1971). Under the *Younger* abstention doctrine, federal courts may not interfere
3 with pending state criminal proceedings absent extraordinary circumstances. See *Drury*
4 *v. Cox*, 457 F.2d 764, 764-65 (9th Cir. 1972) (“Our reading of *Younger v. Harris*
5 convinces us that only in the most unusual circumstances is a defendant entitled to
6 have federal interposition by way of injunction or habeas corpus until after the jury
7 comes in, judgment has been appealed from and the case concluded in the state
8 courts.”); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987) (a federal court should
9 assume that state procedures will afford an adequate opportunity for consideration of
10 constitutional claims “in the absence of unambiguous authority to the contrary”).

11 Palafox-Lugo claims that there is “no adequate state remedy at this point to
12 challenge the Clark County Detention Center’s disobedience of the Las Vegas Justice
13 Court’s order.” ECF No. 1, p. 5. This court is not convinced, however, that Palafox-Lugo
14 is without recourse in state court. He therefore must show cause why the petition should
15 not be dismissed without prejudice under the *Younger* abstention doctrine.

16 **IT IS THEREFORE ORDERED** that, within **twenty (20) days** of entry of this
17 order, petitioner shall **show cause** in writing why the petition should not be dismissed
18 without prejudice based upon the *Younger* abstention doctrine.

19 **IT FURTHER IS ORDERED** that all factual assertions must be specific and
20 supported by competent evidence. If petitioner does not timely and fully respond to this
21 order, or does not show adequate cause as required, the entire petition will be
22 dismissed without further advance notice.³

23 No extension of time will be granted to respond to this order except in the most
24 compelling of circumstances. Nothing in either this court’s orders to date or the mere
25

26
27 ³ This order does not explicitly or implicitly hold that the petition is otherwise free of deficiencies.
28

1 pendency of this action in any manner restrains the state courts from proceeding in a
2 pending prosecution.

3 DATED THIS 27 day of July, 2018.

4
5 
UNITED STATES DISTRICT JUDGE
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28